**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO.735 OF 2007**

**IN**

**SUIT NO.1467 OF 1978**

Smt.Sitabai Mangalchand Kedia .. Plaintiff.

Versus

N.P.Rungta & Ors. .. Defendants.

And

Rajkumari Radhesham Goenka & Ors. .. Respondents.

Mr.Balsara for plaintiff.

Mr.J.S.Chandnani for defendant Nos.1A and B.

**CORAM : S.C.DHARMADHIKARI, J.**

**DATE : 10TH JULY, 2007.**

**P.C.:**

1. Heard learned counsel for the plaintiff and defendant Nos.1A and B. The Chamber Summons is for impleading the heirs and legal representatives of the deceased defendant No.3, who expired on 14th August, 2006 during the pendency of the present suit.

2. It appears that an application was filed before the Prothonotary and Senior Master seeking permission to implead the heirs of the deceased defendant No.3 but that application has been rejected on the ground that the suit itself is dismissed by this Court. Therefore, such an application cannot be taken on file.

3. The Chamber Summons also impugns the said order.

4. Both sides do not dispute that there is a group of 25 suits between the same parties which are directed to be tried together and steps are taken in the leading two suits. There are directions issued by this Court for filing affidavit of documents and completing pre-trial formalities. However, the same is done in the first two suits while in the rest of the suits, the directions remained to be complied with. Relying upon the fact that this non compliance resulted in automatic dismissal of the suit that the Prothonotary and Senior Master denied permission for impleading the heirs.

5. Now, there is no dispute that the further directions and consolidation of the suits would make the conditional order non-applicable. In the peculiar facts of this case, despite the suit being dismissed by a

conditional order, it appeared on Board alongwith other suits and further directions are issued makes it clear that this Court has not dismissed the suit but has decided to proceed with its trial alongwith other suits. Even otherwise, interest of justice would be subserved if in the peculiar facts of this case, an opportunity is given to the plaintiff to have an adjudication on merits of the claim in all suits rather than denying the same on technical ground. There is no delay in taking out the Chamber Summons nor is the application vitiated by lack of bonafides. In such circumstances, Chamber Summons No.735 of 2007 is made absolute in terms of prayer clauses (a) and (b). The amendment to be carried out not only in suit No.1467 of 1978 but in other suits in which deceased defendant No.3 is a party. Such an amendment to be carried out within a period of four weeks from the date of receipt of a copy of this Court’s order.

6. The parties are postponing the hearing of the suits is an apprehension which has been sought to be justified on the basis of the conditional order passed by this Court. While it is true that such conditional orders are passed because parties are negligent and do not proceed with trials, yet, none dispute the fact that such occasions are rare. In this group of 25 suits, hearing of

two suits bearing Nos.1420 of 1979 and 114 of 1989 is stayed by an Appellate order of this Court. In such circumstances those suits can be segregated and the rest of the suits can be taken up for hearing and final disposal as agreed by parties. In the present case, condition imposed was to file an affidavit in lieu of examination-in-chief so that the trial can proceed. That direction remains uncomplied with is the complaint of Mr.Chandnani. I see substance in the complaint. Now, Mr.Balsara agrees that the affidavit in lieu of examination-in-chief in these suits including the one in which the Chamber Summons is taken out would be filed within a period of four weeks from today.

7. A copy of the amended plaint be served on all defendants within this period. Liberty to file additional written statement within a period of two weeks from the date of receipt of amended plaint. All contentions on merits of the controversy between all parties to the suit are expressly kept open and this order does not in any manner prejudice them from raising appropriate contentions.

**(S.C.Dharmadhikari, J.)**